

**This is an electronic copy. Format and font may vary from the official version.
Attachments may not appear.**

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UD 13

In the Matter of)
)
VERIZON NORTHWEST INC.)
)
Petition to Price List IntraLATA Toll,)
Operator and Directory Services.)

ORDER

**DISPOSITION: PETITION FOR PRICE LISTING OPERATOR AND
DIRECTORY ASSISTANCE SERVICES DENIED**

On February 15, 2002, Verizon Northwest Inc. (Verizon) filed a petition with the Public Utility Commission of Oregon (Commission) under ORS 759.030(6) and (8) and OAR 860-032-0035, asking the Commission to permit Verizon to price list intraLATA toll, operator and directory assistance services.¹ On May 31, 2002, the Commission granted Verizon's petition to price list intraLATA toll services, and granted the operator services price list subject to a price cap. The Commission suspended the directory assistance service price list subject to further investigation. *See*, Order No. 02-359.

On July 25, 2002, Verizon filed an application for reconsideration of Order No. 02-359, alleging that the Commission erred by 1) placing a price cap condition on the operator service price list, and 2) not granting the price list petition for directory assistance services. Verizon asked the Commission to remove the condition on the operator services price list and to grant the petition for directory assistance services price list.

On September 12, 2002, the Commission granted reconsideration, in part, of Order No. 02-359. The Commission reconsidered its decision regarding operator services, and determined that further investigation was necessary to ascertain whether operator services are subject to competition under ORS 759.030(8). The Commission held that the operator services price list would remain in effect with the price cap

¹ Qwest Corporation filed a petition to intervene in this docket, which was granted on April 4, 2002. Qwest took no other action in this docket.

condition until an investigation was completed. The request for reconsideration regarding directory assistance services was denied. *See*, Order No. 02-639.

On December 17, 2002, an evidentiary hearing was held in Salem before Commissioners Roy Hemmingway, Lee Beyer and Joan H. Smith, with an administrative law judge presiding. The following appearances were entered:

Willard Forsyth, Attorney at Law, on behalf of Verizon.

Jason Jones, Assistant Attorney General, on behalf of Commission Staff.

On January 2, 2003, Verizon submitted supplemental testimony, which was received.

On January 28, 2003, a Commission workshop was held in Salem, Oregon. This workshop involved three dockets (UX 27, UT 155 and UD 13), all of which raised similar issues. The Commissioners were provided information, heard argument, and had an opportunity to ask questions regarding these three dockets.

On February 5, 2003, Staff and Verizon submitted supplemental testimony, which was received. The parties submitted timely opening and reply post-hearing briefs.

The issues for hearing are 1) whether operator and directory assistance services are subject to competition, and 2) if so, may they be price listed without a price cap condition.

APPLICABLE LAW

The statutory language regarding price listing is found in ORS 759.030, which provides in relevant part:

* * * * *

- (6) If the commission determines that a product or service offered by a telecommunication utility as part of local exchange telecommunications services can be demonstrated by the utility to be subject to competition, or if a product or service is not an essential product or service, the commission may authorize the utility to file a price list, which shall contain the description, terms, conditions and prices of such services or products. . . . In making the determination of whether a product or service is subject to competition, the commission shall consider:

- (a) The extent to which services are available from alternative providers in the relevant market.
- (b) The extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions.
- (c) Existing economic or regulatory barriers to entry.
- (d) Any other factors deemed relevant by the commission.

* * * * *

(8) If the commission determines that a product or service offered by a telecommunications utility as part of interexchange telecommunications services can be demonstrated by the utility to be subject to competition, the commission, under such conditions as it determines are reasonable, may authorize the utility to file a price list, which shall contain the description, terms, conditions and prices of such services or products. . . . In making the determination of whether a product or service is subject to competition, the commission shall consider:

- (a) The extent to which services are available from alternative providers in the relevant market.
- (b) The extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions.
- (c) Existing economic or regulatory barriers to entry.
- (d) Any other factors deemed relevant by the commission.

The rule implementing these statutes is OAR 860-032-0035, which provides in relevant part:

* * * * *

- (3) After notice and investigation, the Commission may, by order, grant a petition to price list a service.
- (4) The petition to price list a telecommunications service may be granted, subject to reasonable conditions, if the Commission finds:
 - (a) The service is subject to competition; or
 - (b) The service is not essential.
- (5) Before finding that a service is subject to competition, the Commission shall consider:
 - (a) The extent to which the services are available from alternative telecommunication providers in the relevant market.
 - (b) The extend to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions;

- (c) Existing economic or regulatory barriers to entry; and
- (d) Any other factors deemed relevant by the Commission.

* * * * *

- (9) Unless the Commission finds the petition is contrary to the public interest, a petition to price list a service shall be granted, subject to reasonable conditions.

Based on the preponderance of evidence in the record, the Commission makes the following:

FINDINGS OF FACT

Description of Services. Verizon's operator services fall into three main categories: Station-to-Station, Calling Card and Person-to-Person. Of the three, Verizon customers most frequently use Station-to-Station services, which include customer-dialed collect calls, as well as third-number billed and operator-assisted toll calls. Verizon's directory assistance (DA) services include National Directory Assistance (NDA) and Local Directory Assistance (LDA).

Position of the Parties. To determine whether operator and directory assistance services are "subject to competition," we must consider the four statutory factors. The parties' positions on these factors are set out below.

1. The extent to which the services are available from alternative telecommunication providers in the relevant market. Verizon defines relevant market by using the U.S. Department of Justice's Merger Guidelines, which state that the relevant market is determined by using the smallest combination of (1) a set of products and (2) a geographic area containing all the alternatives to which consumers could reasonably switch in response to a price increase.² Using this definition, Verizon argues that the relevant market for operator services includes long distance providers AT&T, MCI and Sprint, along with interexchange carriers (IXCs), calling cards, and wireless carriers. Concomitantly, the relevant market for LDA and NDA includes all means by which customers can readily obtain phone numbers. This includes Verizon's DA services, DA services from other local, long distance and wireless carriers, telephone books (LDA only) issued by Verizon and other publishers, on-line telephone directory services, CD-ROM telephone directories, and customer retention of numbers previously obtained.

Staff's definition is narrower, and limits the relevant market to only those services available over a wireline telephone to all customers in Verizon's Oregon local service territory. Under this definition, the relevant market for operator services includes long distance providers AT&T, MCI and Sprint, along with some competitive local exchange carriers (CLECs). Similarly, the relevant market for Verizon's NDA is NDA

² Verizon/1, Danner/17, citing the 1997 *Merger Guidelines*, Section 1, 1.0 Overview.

service available from other long distance carriers to all customers in Verizon's Oregon local service territory, while the relevant market for Verizon's LDA is LDA service available from other local carriers to all customers in Verizon's Oregon local service territory.

2. The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions.

Verizon argues that along with AT&T, MCI and Sprint, pre-paid calling cards and wireless providers are functionally equivalent or substitutable for Verizon's operator services. They also assert that the rates are comparable, as shown by the following chart:³

Comparison of Operator Handled Charges

	Station-to-Station	Calling Card	Person-to-Person
Verizon	\$1.00	\$0.60	\$3.00
Allegiance Telecom	\$1.25	\$0.25	\$3.00
AT&T	\$4.99	\$2.25	\$9.99
TCG	\$1.25	\$0.50	\$3.00
XO	\$1.05	\$0.25	\$3.00
MCI	\$2.25	\$1.50	\$4.90
United Telephone	\$1.30	\$0.50	\$3.00

Verizon asserts that all of the LDA and NDA alternatives it claims are within the relevant market are functionally equivalent and substitutable for Verizon's LDA and NDA services. As the prices for the DA services identified by Verizon range from free (most Internet DA websites) to \$1.99 (MCI and AT&T NDA), the services are available at comparable rates, terms and conditions.

Staff agrees that the primary alternative providers of operator services (AT&T, MCI and Sprint) are functionally equivalent or substitutable. Staff disagrees that such services are available at comparable rates, terms, and conditions because the primary alternative providers' rates are much higher.

As for LDA and NDA, Staff argues that none of the alternative providers are functionally equivalent or substitutable as Verizon controls the 411 access number in its service territory. By dialing 411, a Verizon local service customer is directed to Verizon's DA service. The same is true of 1 + (area code) + 555-1212 as a means of accessing NDA. Accessing the competitors' DA services typically requires a dial-around number. Even assuming that such services are functionally equivalent or substitutable, Staff contends that the higher cost of the services shows that they are not available at comparable rates, terms and conditions.

³ See, Verizon's Application for Reconsideration dated July 25, 2002 at 4.

3. Barriers to entry. Verizon contends that there are no economic or regulatory barriers to entry in the operator and directory assistance services markets.

Staff disagrees, arguing that Verizon has a competitive advantage in its operator services by controlling the "0" access number in its service territory. Similarly, Staff contends that by controlling the 411 and 1+ (area code) + 555-1212 access numbers, Verizon has a competitive advantage in its service territory for LDA and NDA.

4. Other factors.

Staff asks the Commission to consider two other factors: lack of customer awareness of alternatives to Verizon's operator and directory assistance services, and lack of customer benefits from price listing those services. Staff also contends that Verizon's market power in the operator services and DA markets precludes a competitive market.

Customer awareness

The vast majority of operator service calls billed by Verizon are collect calls, with the Verizon customer on the terminating, and not the initiating, end of the call. Therefore, the customer making a choice is not the Verizon customer, but the initiating customer. Staff asserts that the Verizon customer would not have been involved in choosing the carrier or had prior knowledge as to the rates being charged for the call. Those Verizon customers on the terminating end of the call have no ability to make a competitive choice among providers.

While there are collect calls that Verizon bills and rates, the number of calls is substantially less. Staff suggests that the lower percentage of Verizon billed and rated collect calls shows that Verizon customers originating the calls use "0." This use of "0" may suggest that Verizon customers who originate and pay for collect calls may not be aware of any alternatives.

As for LDA and NDA, Staff argues that customers are effectively captive because they lack necessary information about how to access LDA and NDA of the alternative providers.

Staff contends that an effective competitive market cannot exist without customer awareness. According to Staff, the record shows that customers are not aware of alternatives.

Initially, Verizon argues that it is not necessary to look at other factors beyond the first three listed in the statute. Under those factors, Verizon asserts that it has met its burden, and that the price listing petition should be approved without conditions.

Verizon specifically argues that Staff's position is unsubstantiated speculation, and not supported by the record. According to Verizon, the large volume of IXC-generated operator services calls shows that customers know how to access

alternative providers. Further, customers in Verizon's service areas are not "captive" to Verizon's LDA or NDA. Customers are aware of other choices to retrieve long distance telephone numbers.

Customer benefit

Staff asks the Commission to determine that customer benefit is needed, either real or potential, prior to approving this petition. The evidence shows that operator and directory assistance rates will likely increase without any offsetting benefit to the customer. Staff contends that Verizon should make a standard rate filing, or file for a general rate increase if it wishes to raise these rates.

Verizon claims that the issue of whether customers will benefit from price listing these services is a consideration that is not related to whether the service is subject to competition. However, Verizon asserts that there are potential broad customer benefits available under price listing. For example, innovation in services has been seen due to the competitive market. Further, competition does not necessarily mean that all prices will fall.

DISCUSSION AND RESOLUTION

Subject to Competition

We have considered the four statutory factors, and hold that operator and directory assistance services are not subject to competition. We address each factor in turn.

We agree with Staff's definition that the relevant market is all operator services and directory assistance services available over a wireline telephone to all customers in Verizon's Oregon local service territory. This definition excludes other possible providers, such as print or computer based media, calling cards or wireless telephone services. As previously stated in Order No. 03-368, because the Legislature specifically excluded wireless services from the definition of telecommunications competitive providers (ORS 759.005(2)(g)), we do not consider such services to be functionally equivalent alternative providers. The relevant market should be equivalent in both convenience and accessibility.

We next turn to whether the services provided are functionally equivalent or substitutable at comparable rates, terms and conditions. The range of prices for operator and directory assistance services substantiates our belief that price constraining competition does not exist in the relevant market.

We are also concerned that Verizon, essentially controls 411 and 1 + (area code) + 555-1212 access in its service territory for LDA and NDA, and essentially controls "0" as access to operator services. While there are some limited exceptions to these access numbers, in general Verizon has competitive advantage

because of the ease of access to these numbers. Finally, based upon information from other jurisdictions where price listing has been authorized, Verizon is likely to increase its prices for all of these services, which already are priced above its long run incremental costs.

We also consider as other factors the lack of customer knowledge and benefit. We agree with Staff that the availability of alternate services is not widely known by the customers. More important, however, is that the customers do not benefit from an increase in price for the same service.

Commission Discretion

By statute we are mandated to protect customers and the public generally.⁴ While our discretion is not unfettered, we are able to make broad policy determinations in fulfilling our mandate. In this case, the controlling statute⁵ says that we *may* authorize a utility to file a price list if we find that the product or service is subject to competition. So even if we adopted Verizon's definition of relevant market, and found that operator and directory assistance services are subject to competition, we are not required to grant Verizon's petition to price list operator and directory assistance services. Rather, we would exercise our discretion and deny the petition so as to protect customers and the public from likely price increases with no offsetting benefits to customers.⁶ It would be contrary to the public interest to grant a petition under such circumstances.

Based on the record, we do not find that operator and directory assistance services are subject to competition under ORS 759.030. The petition will be denied.

ORDER

IT IS ORDERED that:

1. Verizon's petition to price list operator services is denied. The operator services price list currently in effect is no longer valid. Verizon is to file an operator services tariff within fourteen days of the date this order is entered.

⁴ See, ORS 756.040.

⁵ ORS 756.030.

⁶ We reached a similar conclusion in Qwest's petition to exempt local and national directory assistance services. See, Order No. 03-368 at 17.

2. Verizon's petition to price list directory assistance services is denied. Verizon's directory assistance service tariffs remain in effect.

Made, entered, and effective _____.

Roy Hemmingway
Chairman

Lee Beyer
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.